

Neutral Evaluation  
Report

IN RE CIVILIAN  
COMPLAINT  
BROUGHT BY  
JEFF FOGEL



Hansel Aguilar, Executive Director  
Police Civilian Oversight Board  
City of Charlottesville

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*Quis custodiet ipsos custodes?*

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Neutral Evaluation Report  
IN RE CIVILIAN COMPLAINT BROUGHT BY JEFF FOGEL

Submission Date: September 28, 2022



**City Council**

Honorable Lloyd Snook, Mayor  
Juandiego Wade, Vice Mayor  
Sena Magill, City Councilor  
Brian Pinkston, City Councilor  
Michael Payne, City Councilor

**City Manager**

Michael C. Rogers

**Deputy City Managers**

Ashley Reynolds Marshall      Samuel Sanders

**Police Civilian Oversight Board**

William Mendez, Chairman	James Watson, Vice-Chairman	
Bellamy Brown, Member	Nancy Carpenter, Member	
Dashad Cooper, Member	Jeffrey Fracher, Member	Deirdre Gilmore, Member

**PCOB Independent Council**

Pamela Y. O'Berry

**City Attorney**

Lisa Robertson

**Interim Chief of Police of Police**

Latroy A. Durrette

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## APPENDIX: GLOSSARY OF TERMS

**ADC** – Adult Detention Center

**BWC** – Body-worn Camera

**CAO**- City Attorney Office

**CFD**- Charlottesville Fire Department

**CMO**- City Manager Office

**COPS**- Community Oriented Policing Services

**CPD** – City of Charlottesville Police Department

**CWA**- Commonwealth Attorney

**DOJ**- Department of Justice

**G.O.** – General Order

**PCOB**- Police Civilian Oversight Board

**PCRB** – Police Civilian Review Board

**SOP** – Standard Operating Procedure

**UOF/RTR** – Use of Force/Response to Resistance

**Arrest** – defined in Charlottesville Police Department General Order 536.03 III., as, “an individual has been arrested when he/she is not free to go, whether or not formal words of arrest are used. An arrest constitutes a seizure of the person for Fourth Amendment purposes. The Fourth Amendment requires probable cause to arrest. The test, in interviews or stops of persons, for whether an arrest has occurred is whether a reasonable person under the circumstances of the encounter would have felt free to leave.”

**Baton**- defined in Charlottesville Police Department General Order 537.00 VI. as, “A roughly cylindrical club made of wood, rubber, plastic or metal, carried as a compliance tool and defensive weapon by law-enforcement officers.”

**Choke Holds / Neck Restraints:** defined in Charlottesville Police Department General Order 537.00 I. as, “The use of any body part or object to attempt to control or disable a person by applying pressure against the neck, including the trachea or carotid artery, with the purpose, intent, or effect of controlling or restricting the person's movement or restricting the person's blood flow or breathing, including chokeholds, carotid restraints, and lateral vascular neck restraints.”

**Conducted Energy Weapon (CEW):** defined in Charlottesville Police Department General Order 537.00 I. as, “Conducted Energy Weapons (Taser) are weapons that disrupt the central nervous system of the body.”

**Deadly Force** – defined in Charlottesville Police Department General Order 537.00 VI. as, “any use of force substantially likely to cause serious bodily injury or death, including but not limited to the discharge of a firearm, the use of an impact weapon under some circumstances, other techniques or equipment, weapons of last resort, and certain interventions to stop a subject's vehicle.”

**De-escalation:** defined in Charlottesville Police Department General Order 537.00 I. as, “Actions or communications during an encounter used in an attempt to stabilize the situation and reduce the immediacy of the threat so more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include but is not limited to the use of such techniques such as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.”

**Defensive Tactics/Techniques:** defined in Charlottesville Police Department General Order 537.00 I. as, “a response to resistance option to gain compliance from resistant or aggressive individuals in arrest or other enforcement situations.”

**Duty to Intervene:** defined in Charlottesville Police Department General Order 537.00 I. as, “Any law-enforcement officer who, while in the performance of his official duties, witnesses another law-enforcement officer engaging or attempting to engage in the use of

excessive force against another person shall intervene, when such intervention is feasible, to end the use of excessive force or attempted use of excessive force, or to prevent the further use of excessive force. A law-enforcement officer shall also render aid, as circumstances reasonably permit, to any person injured as the result of the use of excessive force.”

**Escalate:** defined in Charlottesville Police Department General Order 537.00 I. as, “Actions or communications during an encounter that rapidly increase the intensity or seriousness of the encounter that may increase the chance of violence.”

**Excessive Force** – defined in Charlottesville Police Department General Order 537.00 I. as, “any force that is objectively unreasonable given the totality of the circumstances, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.”

**Exigent circumstances:** defined in Charlottesville Police Department General Order 537.00 I. as, “Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a subject, or some other consequence improperly obstructing legitimate law enforcement efforts. (Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).”

**Fourth Amendment to the United States Constitution** - The right of the people to be free in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Graham vs Connor:** 490 U.S. 386 (1989), was a United States Supreme Court case where the Court determined that an objective reasonableness standard should apply to a civilian's claim that law



enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person.

**Hogtie:** defined in Charlottesville Police Department General Order 537.00 I. as, "Method of binding limbs together, rendering a subject immobile."

**Imminent Death:** defined in Charlottesville Police Department General Order 537.00 I. as, "Death that is impending or about to occur."

**Kinetic Impact Munitions:** defined in Charlottesville Police Department General Order 537.00 I. as, "Includes impact rounds and baton rounds, such as rubber batons, bean bag rounds, foam baton rounds, and plastic, wax, wood, or rubber-coated projectile."

**Less-Lethal Force** – defined in Charlottesville Police Department General Order 537.00 I as, " Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another." It is further described in section VI. of the G.O. as the option used, "When de-escalation techniques are not effective or appropriate, an officer may consider the use of Less-lethal force to control a non-compliant or actively resistant individual. This level of force poses a foreseeable risk of significant injury or harm but is less likely to cause death. An officer is authorized to use agency-approved, less-lethal force techniques and issued equipment:

- to protect the officer or others from immediate physical harm,
- to restrain or subdue an individual who is actively resisting or evading arrest, or
- to bring an unlawful situation safely and effectively under control.

Examples of Less-lethal force options are:

- Conducted Energy Weapon (CEW/TASER)
- Impact Weapons (ASP, Baton, Bean Bag rounds)
- K-9

**Objectively Reasonable:** defined in Charlottesville Police Department General Order 537.00 I. as, “A Fourth Amendment standard whereby an officer’s belief that they must protect themselves or others from death or serious bodily injury is compared and weighed against what a reasonable or rational officer would have believed under similar circumstances. This determination is made by reviewing all relevant facts and circumstances of each particular case, including, but not limited to the severity of the crime at issue; whether the subject poses an immediate threat to the safety of the officers or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight.”

**Positional Asphyxia:** defined in Charlottesville Police Department General Order 537.00 I. as, “Death resulting from body positioning restricting the person’s ability to breathe.”

**Probable Cause** – defined in Charlottesville Police Department General Order 536.03 III., as, “probable cause exists when the facts and circumstances within an officer’s knowledge and of which he had reasonably trustworthy information are sufficient to cause a prudent person to believe that an offense has been or is being committed. Probable cause has come to mean more than mere suspicion, but less evidence that would justify judicial conviction.”

**Reasonable Suspicion** – defined in Charlottesville Police Department General Order 536.03 III., as “such suspicion that will justify an officer, for Fourth Amendment purposes, in stopping a defendant in a public place is quantum of knowledge sufficient to induce a police officer, under normal circumstances, to believe criminal activity is at hand. It must be based on specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant intrusion.”

**Reasonable Belief:** defined in Charlottesville Police Department General Order 537.00 I. as, “Is belief based on a set of facts and/or circumstances that would cause a reasonable person to believe something is true.”

**Resistance:** defined in Charlottesville Police Department General Order 537.00 I. as, “Acts by an individual that opposes an officer’s lawful commands. There are two types of resistance:

- “Active” Resistance: Affirmative violent or defensive action to defeat an officer’s ability to take them into custody.
- “Passive” Resistance: Nonviolent opposition to authority or refusal to cooperate with legal or lawful requirements.”

**Serious Bodily Injury:** defined in Charlottesville Police Department General Order 537.00 I. as, “the term “serious bodily injury” means bodily injury which involves a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.”

**Warning shot:** defined in Charlottesville Police Department General Order 537.00 I. as, “Discharge of a firearm for the purpose of warning or seeking compliance from an individual, but not intended to cause physical injury.”

**Weapon of Last Resort:** defined in Charlottesville Police Department General Order 537.00 I. as, “A weapon used outside of its intended purpose or design. A weapon of last resort can be used by an officer when the officer’s life or the life of another is in imminent threat of death or serious bodily injury. A weapon of last resort can be an object or use of physical tactics.”

**Vascular Neck Restraint:** defined in Charlottesville Police Department General Order 537.00 I. as, “A physical maneuver which restricts blood-flow to the brain, which can result in unconsciousness.”

# NAME OF CASE

IN RE CIVILIAN COMPLAINT BROUGHT BY JEFF FOGEL

## EXECUTIVE SUMMARY

In order to *informally resolve* the present dispute, this neutral evaluation was completed pursuant to an agreement between a community member (“Complainant”) who lodged a complaint against a Charlottesville Police Department Officer (“Officer”), and the Interim Chief of Police (“Chief”) who represents the Charlottesville Police Department (“Department”). This complaint review, which came before the Police Civilian Review Board (now Police Civilian Oversight Board) (“PCOB”) through a request by the Complainant in July of 2020, is hereby “resolved.” As outlined in this report, the process by which this complaint was resolved highlighted key areas for improving the PCOB’s practices, policies, and procedures. There were also areas of the Department’s practices, policies and procedures identified that could benefit from revision.

Noteworthy in this review is the level of transparency afforded to the PCOB and the Executive Director in order to complete the review of the case in question. Despite historical issues with access to information between the Department and the PCOB, for this review, the Department participated fully in the process. The investigative file for this investigation included:

- The unredacted 100-page Internal Affairs report
- Five (5) third-party video recordings obtained by the Department
- Body Worn Camera (“BWC”) footage
  - Three (3) on-the-scene videos
  - Eight (8) videos of prior Department encounters with the community member in question
- Audio Recordings
  - Four (4) calls to the Complainant by the investigator
  - Three (3) calls to independent witnesses by the investigator
  - Four (4) Emergency Communications recordings

The case file was methodically and meticulously reviewed. The purpose of this neutral evaluation was not to “reinvestigate” the interaction at hand, but rather to determine whether the Department thoroughly, completely, accurately, objectively, and impartially investigated the claims brought forth by the Complainant against the Officer. In summary, there were elements or investigative tasks missing from the Department’s investigation. Considering the missing components, it cannot be said that the Department thoroughly, completely, and accurately investigated the allegations at hand. Additionally, while for the most part, the Department maintained an objective and impartial approach to the investigation, there were instances where the objectivity and impartiality of the Department’s investigation could reasonably be called in to question.

To provide the City of Charlottesville’s community with better services as they relate to police interactions and police accountability, the City Council, City Manager, Department and PCOB should consider adopting the recommendations presented in this neutral evaluation. Specifically, the following:

**Key Recommendations for Council**

- Consider how policies regarding the application of the public intoxication statute can have a disparate impact on vulnerable communities in the City of Charlottesville.
- Consider ensuring working closer with PCOB members to ensure the Board’s execution of duties in a reasonable time frame.
- Consider amending the current ordinance to specify a time frame or provide more guidance to the PCOB regarding review hearings beyond the wording in Sec. 2-459 (b) Hearing to be scheduled: “...shall be held promptly.”

**Key Recommendations for City Manager**

- Consider working with the City Attorney’s Office to ensure a representative from that office is present at key PCOB meetings to include pre-hearings and hearings.

- Consider working with the City Attorney's Office to ensure a representative from that office is providing timely legal review of PCOB policies, practices and procedures.
- Consider prioritizing the provision and or approval of essential PCOB resources (i.e. human resources, public facing office, etc.)

#### **Key Recommendations for the Police Department**

- Consider requiring internal affairs investigators to develop an investigative plan before commencing an investigation (and revising throughout as appropriate).
- Consider lowering the *probable cause* standard to *reasonable suspicion* when determining whether to refer complaints to the Commonwealth Attorney Office (or another investigative agency) when there are allegations of criminal misconduct against a Department officer.
- Consider revising the public intoxication general order (G.O.) to further guide officers in the decision-making process when dealing with individuals who are intoxicated in public.
- Consider retraining officers or reminding them (through a circular order, roll-call training, or other means) about the purpose of the public intoxication statute and the options officers have at their disposal in those encounters.
- Consider memorializing all investigative activity through memorandums of investigative activity.
- Consider revisiting policies regarding whether officers can view BWC before their report writing in instances where force was utilized and or where an encounter may reasonably lead to a complaint or Departmental review.

#### **Key Recommendations for the Police Civilian Oversight Board**

- Consider further exploring the use of recusals and how to determine whether a conflict of interest exists that could impact the public trust in the Board.

- Consider modeling institutional transparency by publicizing the training and attendance logs of Board members.
- Consider formally adopting a review metric like the *rubric* utilized by the evaluator in this report.
- Consider reevaluating a standard for current and future Board member “readiness”.
- Consider adopting the neutral evaluation as a permanent option for informally resolving complaints.
- Consider auditing or investigating whether there is empirical support for the assertion that public intoxication is being disproportionately enforced in the downtown mall and what impact that may have on historically underserved communities.

If implemented, these recommendations can align the oversight program and police departmental policies with standard best and effective practices in the Commonwealth and across the Country.

## PROCEDURAL HISTORY:

On July 9<sup>th</sup>, 2020, the Charlottesville Police Department ( “Department” or “CPD”) received an email<sup>1</sup> from J.F. ( “Complainant”)<sup>2</sup>. The subject of the Complainant’s email was to express dissatisfaction and concern regarding how the Department interacted with a community member. Specifically, the Complainant referenced an incident between Officer L.H. and community member C.G. that occurred in the City of Charlottesville’s downtown mall on July 8<sup>th</sup>, 2020. The email was directed to the Department

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<sup>1</sup> See Exhibit A

<sup>2</sup> The status of JF as a Complainant (as opposed to the attorney for the subject of the encounter) has been misreported by local media (see: <https://www.cvilletomorrow.org/it-took-five-years-but-the-board-of-civilians-that-oversees-the-charlottesville-police-department-has-its-first-case/?amp=1>). The Complainant clarified that he is not the attorney for C.G. and the Executive Director reached out to the media outlet reporter and editor to clarify this point to attempt to correct the public record, however he did not receive a response.

Chief<sup>3</sup>. In the email, the Complainant included a link to a cell-phone video which was recorded at the scene by a bystander and subsequently posted to social media. The Complainant indicated in the email that the footage depicted, “one of your officers who appears to have assaulted, kicked, and then applied a choke hold on a homeless person on the downtown mall yesterday.” On or around July 9th, the Department received additional emails from other community members expressing similar concerns about the encounter in question. The Department immediately began an investigation of the incident in question. On September 8<sup>th</sup>, 2020, the Department notified the Complainant via a disposition letter<sup>4</sup> that the investigation had been completed:

“The disposition of this investigation is as follows:

General Order 400.00, Code of Conduct- Rules and Regulations- *48: Use of Force-	Exonerated
General Order 400.05, Bias Based Policing-	Unfounded”

As noted above, the Department concluded that Officer L.H. was “exonerated” from the allegation that he violated the Department’s Response to Resistance (a.k.a. Use of Force or UOF/RTR) - General Order 537.00. Additionally, the Department found that the allegation regarding a violation of Biased Based Policing- General Order 400.05 was “unfounded”. On September 10, 2020, at a Police Civilian Review Board<sup>5</sup> (“PCRB”) meeting<sup>6</sup>, the Complainant expressed dissatisfaction with the Department’s investigation and inquired if the PCRB would review the matter. On September 11, 2020 PCRB Chair Stuart Evans followed up with the Complainant via email<sup>7</sup> to inform him that he had engaged the City Attorney’s office to ask procedural questions and more information would be forthcoming. On September 14, 2020 PCRB

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<sup>3</sup> At the time of the incident, Chief Rashall Brackney was leading the Department. Currently, she is not employed with the City of Charlottesville. Interim Chief Latroy “Tito” Durette is leading the Department.

<sup>4</sup> See Exhibit B

<sup>5</sup> The Police Civilian Review Board is the predecessor to the Police Civilian Oversight Board. For more information regarding the Board see: <https://www.charlottesville.gov/DocumentCenter/View/2377/ORDINANCE-passed-November-4-2019-Adding-PCRB-to-the-City-Code-PDF>

<sup>6</sup> The video recording of the PCRB meeting can be accessed at: <https://www.youtube.com/watch?v=-8PNX52GSiU>  
The inquiry from the complainant can be heard at minute [1:56:30].

<sup>7</sup> See Exhibit C



Chair Evans contacted the Complainant via email<sup>8</sup> to instruct him (acting on advice of counsel) that in order for the PCRB to move forward with a review request, the Complainant must confirm in writing that those were his wishes. Within the hour, the Complainant responded via email<sup>9</sup> affirmatively, “I wish the review to proceed.”

On June 9<sup>th</sup>, 2022 (at the regularly scheduled monthly meeting), the Police Civilian Oversight Board<sup>10</sup> (hereinafter “PCOB”) voted to hold a review request hearing regarding this matter. The PCOB agreed to place the review request hearing on the July 2022 monthly meeting agenda. On July 11, 2022, the PCOB held a pre-hearing conference to attempt to resolve preliminary matters related to the review request hearing. The pre-hearing conference was presided over by PCOB Chair William “Bill” Mendez and Hearing Examiner Cecil Creasey, Jr. All PCOB members were present (except for Mrs. Deirdre Gilmore). The Complainant was present as well as several Department representatives to include Interim Chief Durrette and Internal Affairs Investigator, Sgt. Gregory Wade.

At the pre-hearing conference, Board members Nancy Carpenter and Dashad Cooper recused themselves. The former expressing an ideological conflict of interest and the latter expressing that due to his recent appointment he was not well-prepared to participate. Additionally, the Complainant requested Board Members Bellamy Brown and Jeff Fracher recuse themselves on the basis, as alleged by the Complainant, that Mr. Brown and Mr. Fracher had previously expressed hostilities towards him that would suggest they would not be impartial. The Board members did not recuse themselves. Hearing Examiner Creasey inquired if the parties were interested in “informal resolution” as contemplated by the civilian

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<sup>8</sup> See Exhibit D

<sup>9</sup> See Exhibit E

<sup>10</sup> In December 20, 2021, the City Council amended Chapter 2, Article XVI of the City Code to dissolve the City’s Police Civilian Review Board and to establish a Police Civilian Oversight Board (PCOB) in conformity with Virginia Code § 9.1-601 and to empower the Police Civilian Oversight Board with certain additional oversight authority and duties enabled by the statute. The purpose of the Board is to establish and maintain trust between and among the Charlottesville Police Department, which shall be referred to as “the Department,” the City Council, the City Manager, and the public. The complete ordinance can be accessed at: <https://www.charlottesville.gov/DocumentCenter/View/7062/ORDINANCE-passed-December-20-2021-Amending-and-Reenacting-Chapter-2--Establishing-PCOB-PDF>

oversight ordinance and operating procedures<sup>11</sup>. The Complainant indicated he was open to this possibility and Chief Durette asked for some time to consider.

After the pre-hearing conference, Executive Director Aguilar followed up with the parties and the hearing examiner to discuss the logistics of an informal resolution session. The parties confirmed that they would meet virtually to discuss the complaint in a session facilitated by Hearing Examiner Creasey on July 28<sup>th</sup>, 2022. On July 14, 2022, the Executive Director notified the PCOB via a memorandum<sup>12</sup> addressed to Chair Mendez and Vice Chair James Watson that the parties were interested in attempting to resolve the matter informally, and that the PCOB should accept their agreement to hold the alternative dispute resolution (ADR) session facilitated by Hearing Examiner Creasey.

The parties were given instructions and a document to sign by Mr. Creasey, but both failed to deliver it before the scheduled session of July 28<sup>th</sup>, 2022. Mr. Creasey asked to reschedule the session because he did not have the signed agreements. Contemporaneously, City Attorney Lisa Robertson expressed concerns that: 1) Mr. Creasey's contract with the Board only allowed him to serve as a hearing examiner and not an ADR facilitator; and, 2) while the ordinance and interim hearing procedures mention informal resolution, the City Council had not yet passed the operating procedures which specify the process for ADR resolutions.

To preserve the spirit of the parties' willingness to resolve this matter informally, and to consider Mr. Fogel's concerns presented in the prehearing conference about "conflicts of interest" and or "hostilities" he alleged he had been subjected to by Board members, Executive Director Aguilar proposed conducting a neutral evaluation<sup>13</sup>. This proposal was presented to the City Attorney, City Manager, Board

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<sup>11</sup> The procedures may be accessed at:

<https://www.charlottesville.gov/DocumentCenter/View/7061/RESOLUTION-passed-November-01-2021-Approving-Hearing-Procedures-for-the-Charlottesville-Police-Civilian-Review-Board-PDF>

<sup>12</sup> See Exhibit F

<sup>13</sup> A neutral evaluation is a type of ADR where parties submit their sides in written and or oral summaries to a "neutral" person who will render a decision.

Chair and the Board's Independent Counsel who all felt this route would accomplish the goals of reviewing the case and working within the procedural constraints of not having operating procedures approved by Council. Executive Director Aguilar later spoke to both parties about this option and presented the written agreement which was executed by both parties<sup>14</sup>. He then submitted an additional memorandum<sup>15</sup> to the Chair and Vice Chair recommending that the PCOB accept the agreement by the parties to informally resolve the matter through the neutral evaluation. At the September 2022 Board meeting, the PCOB (acting on advice on counsel) voted<sup>16</sup> to dismiss the case with prejudice to allow Executive Director Aguilar to conduct a neutral evaluation of the case.

## SCOPE OF THE NEUTRAL EVALUATION

This neutral evaluation assesses the investigation of the allegations brought forth by the Complainant to the Department in his initial email and the subsequent concerns he expressed. Specifically, the neutral evaluation considered:

- Whether the CPD thoroughly, completely, accurately, objectively, and impartially investigated the claims that the CPD subject officer:
  - Assaulted;
  - Kicked; and
  - Applied a chokehold on Mr. Gonzalez in the downtown mall.
- Whether the CPD considered and thoroughly, completely, accurately, objectively, and impartially investigated the additional allegations brought forth by Mr. Fogel. Specifically, the appropriateness of the:

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<sup>14</sup> See Exhibit G

<sup>15</sup> See Exhibit H

<sup>16</sup> See Exhibit I

- Threat to arrest CG;
- The arrest of CG; and
- The felony assault on a police officer charge.

The purpose of the neutral evaluation is to holistically review the CPD's investigative file and provide findings on the aforementioned elements (i.e. thoroughness, completeness, accuracy, objectivity, and impartiality). The report includes the following recommendations (where applicable):

- Recommendations to the CPD to improve practices, policies, and procedures regarding any aspect of the case in question;
- Recommendations to the Board to improve practices, policies, and procedures regarding their review of this case and or provision of services to community members;
- Recommendations to the City Council to improve practices, policies, and procedures associated with the work of the Board; and
- Recommendations to the City Manager to improve practices, policies, and procedures associated with administrative support provided to the Board.

## FACTS

On July 8, 2020 the Department was requested to assist the Rescue squad in responding to a call for service for a person that was laying down on the mall. Officer L.H. was dispatched to the scene and arrived at the same time the Rescue Squad arrived. Rescue Squad attempted to medically assess the person, who was later identified as C.G., but he refused service from them. Officer L.H. attempted to assess the situation further. He inquired if C.G. had been drinking, and C.G. responded that he had. Officer L.H. determined that C.G. was "intoxicated" and could not remain in the area. Officer L.H. attempted to get C.G. to leave the downtown mall area on his own volition, however, C.G. refused to leave the area even after being informed by Officer L.H. that he would be arrested for public intoxication.

After being told he could be arrested, C.G. told the officer, “Let’s do this.” Shortly after, the officer instructed C.G. to put his hands behind his back. Initially, C.G. complied with the instructions but then he pulled away while the officer attempted to handcuff him. A physical struggle ensued wherein C.G. actively resisted the arrest and grappled with the officer. The officer utilized force to bring C.G. under control and affect the arrest. The force applied by Officer L.H. included grappling, a knee strike to the groin, and a takedown to the ground. While on the ground, Officer L.H. was able to put C.G.’s hands behind his back in time for the assisting officers to help complete the arrest. Parts of the encounter were witnessed and recorded by some bystanders in the vicinity. Part of the encounter was also captured by the BWC of Officer L.H.

Officer L.H. charged C.G. with public intoxication, resisting arrest, and assault on a police officer. The Department received several complaints about the encounter. The various complaints were lodged by individuals who viewed a video of the encounter posted to social media. The community members expressed concern that the officer “assaulted” someone and put him a “chokehold.” This was echoed by the Complainant in his initial email to the Department. During the investigation, however, the Complainant additionally expressed concern, via email<sup>17</sup>, that C.G. was inappropriately charged with V.A. Code Sec. 18.2-388 and assault on a police officer,

“The statute which Mr. Gonzalez is charged with violating, Va. Code Sec. 18.2-388, is designed to protect the inebriated person and to protect the community from someone out of control. Here, the officer enforced the law as if it only applied on the Mall. That was wrong and gives the clear impression that the police department is enforcing the law on behalf of businesses, not people. The statute itself and its application in this case has the effect of criminalizing the poor and homeless. There are other, better ways to deal with the issue. Though that fault may lie with the department and not the officer.”

The Complainant explicitly<sup>18</sup> requested that those allegations be investigated, “In your report, I hope you address these issues.”

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<sup>17</sup> See Exhibit J

<sup>18</sup> Id

In response to the incident, the Department's Division of Internal Affairs ("IA") investigated the event. IA interviewed the Complainant, five independent civilian witnesses, and the subject officer. There was no record that the IA investigators interviewed the witness officers or a reason to explain why their testimony was not considered beyond reviewing their BWC footage. IA reviewed footage posted to social media and other footage submitted to the Department which had not been publicly revealed. IA also reviewed the available BWC of the subject officer and the witness officers. There were a total of 19 videos preserved by the Department for this incident but considering that some officers did not arrive on the scene they were deemed "less relevant<sup>19</sup>" by the IA investigator. Additionally, the investigator reviewed BWC of prior encounters between C.G. and the Department. The investigators also canvassed the scene to attempt to locate additional footage that may be available.

The Department conducted both an administrative investigation and criminal investigation. Both investigations of the Department concluded that the subject officer's actions followed either Departmental policies and procedures or state law, federal law, and or constitutional law regulating the actions and authority of police officers.

## ISSUES/ALLEGATIONS

The Complainant questioned whether the use of force or the officer's response to resistance was appropriate. Furthermore, the Complainant questioned whether there had been discriminatory application of the law and use of force to a "homeless" person. The Complainant also requested an investigation of the threat to arrest C.G.; the appropriateness of the arrest of C.G.; and the charge of felony assault on a police officer applied to C.G. The role of the PCOB and thus the neutral evaluator was to determine whether the Department's investigation thoroughly, completely, accurately, objectively, and impartially investigated the claims brought forth by the Complainant.

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<sup>19</sup> CPD IA Investigative Report Arrest of C.G.

## FINDINGS AND DISCUSSION

The Department provided both the available video and audio recordings gathered in support of the investigation. Additionally, the written records reviewed by the Department were made available to the evaluator. To systematically assess the five elements of a proper investigation<sup>20</sup> (i.e. thoroughness, completeness, accuracy, objectivity, and impartiality) the neutral evaluator utilized the rubric<sup>21</sup> that he originally created for the PCOB members' consideration when reviewing CPD investigations. The following scores were assigned pursuant to the review of the case file:

- Score 4 – The CPD took all necessary steps to complete this task.
- Score 3 – The CPD mostly accomplished this task but missed at least one important component.
- Score 2 – The CPD missed at least half of the steps necessary to complete this task.
- Score 1 – The CPD did not adequately address this task.

A total score was calculated and recorded for each section. The “perfect” or maximum score for each element is equal to 20 points and all elements combined is 100. In reviewing the case file, none of the investigations of each separate allegation achieved a perfect score. The allegations of misconduct are

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<sup>20</sup> A proper or “complete investigation” as defined by the Office of Community Oriented Policing Services (COPS) is, “one which includes all relevant information required to achieve the purpose of the inquiry. A complete investigation is not necessarily exhaustive. There are many inquiries where a good faith professional judgment determines that sufficient relevant evidence of all points of view has been acquired, and where collecting more information merely would be cumulative.

*One should expect of a complete investigation that a competent adjudicator will be able to make a finding without resorting to surmise, prejudice, or assumption of facts at issue. A complete investigation should take place where the allegations, if true, would likely result in formal discipline. Likewise, a complete investigation should be considered if it appears from a preliminary review that an agency’s policy, standard, or training may be a factor in unintended consequences apparent in the complaint.” (pg. 29).*

Source: U.S. Department of Justice, Office of Community Oriented Policing Services, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>

<sup>21</sup> See Exhibit K

addressed in the chronological order that they occurred: threat to arrest C.G.; use of force/response to resistance (“UOF/RTR”); arrest of C.G. and the felony charge of assault on a police officer.

### The threat to arrest C.G.

In assessing the threat to arrest, the Department approached the allegation through the lens of G.O. 400.05; Biased-Based Policing. It is understandable that the Department would explore the actions through this policy (specifically because the Complainant indicated that C.G. was “homeless”). However, the additional police actions in question (i.e. threat to and arrest for public intoxication) also needed to be reviewed through the lens of G.O. 536.16- Investigations Involving Public Intoxication. The latter G.O. more closely speaks to the Complainant’s concern about the arrest of C.G. The Department, however, did not utilize this G.O. to determine if the officer’s actions followed Departmental policies.

As defined by G.O. 400.05 III, *Biased-Based Policing* is “the detention, interdiction, or other disparate treatment of any person on the sole basis of their racial, ethnic status, or characteristics.” While place of residence is explicitly codified as a protected trait in some jurisdictions<sup>22</sup>, neither the City of Charlottesville nor the CPD define it as a protected trait. Although not articulated clearly, the Department determined that “There was not substantial evidence to support that Officer L.H. violated the biased based policing policy by requesting Mr. Gonzalez to leave the mall.”

In reviewing the available evidence of this case, one may reach this conclusion with proper articulation, however, the questioning of the subject officer did not fully solicit information to reach this conclusion. The investigator rightfully asked Officer L.H. if he had prior encounters with C.G. and the officer stated “no.” This helps to address the neutrality the officer had in the encounter, however, there were no specific questions asked by the investigator that could help determine if the actions were biased, even though there was an opportunity to do so. Specifically, there was a natural follow-up after the investigator asked<sup>23</sup> the subject officer what was his intention of telling C.G. to leave the mall was and

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<sup>22</sup> See the District of Columbia’s protected traits: <https://ohr.dc.gov/protectedtraits>

<sup>23</sup> CPD IA Investigative Report Arrest of C.G.



whether it was “normal” to provide an option for intoxicated individuals to leave or “lock” them up, “when you first were trying to get them to leave the mall, what was your intention of telling him to leave the mall? I mean, I know you said that you knew you’re going to get calls from him. So you want to explain that a little bit more about, is it normal? Let me ask you this isn’t normal practice for you to give them the option by telling people, people who were intoxicated to leave them on first, compared to just going down there and locking them up?”

In responding to those questions, Officer L.H stated the following:

*I like to give them the opportunity to go sober up or go somewhere. Just, you know, I’d be reasonable with them. I know that these people don’t have anywhere to go, really anywhere to be. But since I am the mall officer, I get complaints all the time about intoxicated people on the mall. You know, it’s my thinking that, Hey, look, I understand you are drunk in public. You know, as long as you’re not causing a problem, I don’t really have a problem with it. But once we start getting calls from citizens about it, that’s kind of when it starts to become a problem, but I still will try to get them at least out of the public’s view so they can have a chance to, to get sober or you know, just not be on the mall.*

This response required more follow up to fully weed-out the possibility of biased-based policing. Who are “these people” that the officer is referring to? Does he mean intoxicated individuals or unhoused individuals or both? Was C.G. “causing a problem” other than community members calling in about him? Under what departmental guidance, practice or procedure is Officer L.H. operating under when he states the need to “try to get them at least out of the public’s view”? Is Officer L.H. suggesting that being intoxicated in public is acceptable just if it is not on the downtown mall? These questions should have been asked and or anticipated through a thorough investigative plan which includes an interview guide. In the criminal investigation interview, Officer L.H. did articulate that he was also concerned about C.G. staying in the downtown mall on a hot summer day in the state he was in, however, as valid as a concern as that is, how would relocating C.G. to another area away from the downtown mall resolve the issue? During the criminal investigation interview, Officer L.H. stated what his options were in these matters to include, contacting a friend of the individual to pick them up and relocating them to their residence,

however since C.G. was unhoused, these were not options. The officer also explained that there are no “detox” centers in the City of Charlottesville.

In preparation for conducting the neutral evaluation, Executive Director Aguilar had a virtual meeting with the Complainant. At the meeting, the Complainant expressed his concerns with the disparate impact of applying the public intoxication law to unhoused individuals in the downtown mall. He further shared that there was an attempt by the City to codify similar practices<sup>24</sup>, but that through his advocacy as a civil rights attorney he was able to oppose a city ordinance seeking to prohibit individuals from soliciting immediate donations near two streets running through the Downtown Mall.

Considering the alleged violation in question, the investigators should have reviewed the subject officer’s actions through G.O. 536.16- Investigations Involving Public Intoxication. Had the investigators examined the officer’s actions through this policy, there could be a more complete analysis about the appropriateness in threatening to arrest C.G. and in arresting C.G. for public intoxication. In section II. of the G.O (parallel to Code Section 18.2-388, “Profane Swearing and Intoxication in Public”), officers are instructed that, “When the subject of a public intoxication investigation is intoxicated to a degree that the investigating officer believes the subject may cause harm to himself/herself or others, the investigating officer will follow the procedures of arrest...” Furthermore, the G.O. enumerates the procedures as follows: “1. Arrest of the extremely intoxicated subject for his/her safety; a. In those investigations where a person is found in to be extremely intoxicated, he or she may be arrested for their safety and protection;”

It is unclear, because of the lack of prompting by the investigators during the administrative interview, how the officer determined C.G. was intoxicated to a degree that the officer believed C.G. could “cause

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<sup>24</sup> In *Clatterbuck et al v. City of Charlottesville*, No. 3:2011cv00043 - Document 88 (W.D. Va. 2015), the Complainant argued that the City’s ordinance limiting panhandling was unconstitutional. He juxtaposed the City’s actions in that case to the Department’s action in the present case. The Complainant asserts that the City’s enforcement of activity in the downtown area is catered to the businesses in the area and has the impact of restricting the constitutional rights of vulnerable community members like individuals experiencing homelessness.

harm to himself/herself or others.” From the investigator’s interview with Officer L.H. and as corroborated by the BWC, we do know that the subject officer asked C.G. if he had been drinking, however, Officer L.H. also indicated<sup>25</sup> that he did not ask C.G. “how much” nor could the officer “smell his breath due to wearing a mask and trying to stay six feet away from him the best I could.” The officer did note in the interview that C.G. was “very unsteady” on his feet and that his eyes “were bloodshot and glassy” and that he was speaking with “slurred speech<sup>26</sup>”, however there is no indication if the subject officer distinguished those potential intoxication indicators from other medical explanations. Without asking sufficient questions establishing the officer’s probable cause, it is difficult to ascertain whether the threat to arrest C.G. followed the Department’s policy. Additionally, when one of the back-up officers arrived on the scene, they asked Officer L.H. if the officer is “alright.” Officer L.H. responds<sup>27</sup>, “I’m good, yeah. Tried to give him a chance to leave and he...(inaudible)...stupid.” This on the scene statement, again, calls in to question whether C.G. presented a danger or if he could have been allowed to leave without causing safety concerns for community members or himself.

#### Use of force/ response to resistance: “assaulted; kicked; and applied a chokehold on Mr. Gonzalez in the downtown mall”

As referenced earlier, the Department conducted both a criminal investigation and an administrative one. Both investigations yielded a finding of no wrongdoing. In reviewing the criminal investigation conducted by a CPD Captain not assigned to the Internal Affairs Bureau, it was observed that the matter was not submitted to the Commonwealth Attorney for criminal prosecution. It was unclear what specific investigative steps the CPD Captain took (beyond the interview of Officer L.H.) to reach the

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<sup>25</sup> CPD IA Investigative Report Arrest of C.G.

<sup>26</sup> During the criminal investigation, the CPD Captain who interviewed C.G. explored another potential reason for the “slurred speech” like a “language barrier” considering that C.G. is “Hispanic.” Officer L.H. stated that C.G. made no indication that he did not speak English so this was ruled out as an explanation for the “slurred speech”.

<sup>27</sup> CPD IA Investigative Report Arrest of C.G.

conclusion that no criminal violation took place since there is only one email from the CPD Captain. His

August 22, 2020, email<sup>28</sup> memorialized his analysis as follows:

*After thorough review of the arrest of C.G. by Officer L.H. on July 8, 2020, there is no evidence of criminal wrongdoing on his part. His use of force, to include physical control tactics, a knee strike, and a take down maneuver were all appropriate and approved methods by CPD and DCJS policies and procedures for overcoming resistance. It is clear from all video evidence and witness statements, that C.G. resisted arrest. Based on all known facts, the arrest was based on probable cause and because C.G. resisted that arrest, Officer L.H. actions were lawful. This case was not presented to the Commonwealth Attorney for review, with respect to Officer L.H., because no criminal violation occurred that needed legal review. Chief Brackney was notified of my findings and concurred."*

While the criminal investigation was mostly consistent with standard best and effective practices of interviewing, there were a few notable instances where the interviewer included "leading questions<sup>29</sup>." These questions impact the impartiality and objectivity elements of the investigation. In inquiring about the UOF/RTR, the CPD did question the subject officer about each action (i.e. grappling, knee strike, takedown, etc.). In doing so, the CPD Captain played the BWC videos, and the videos provided by the witnesses and asked the subject officer to explain each action. The subject officer noted that he had reviewed the BWC prior to writing his report on the incident.

A separate CPD Captain concurred with the findings of the criminal investigation. Without an actual case file for this criminal investigation, it cannot be deemed to be thorough, complete, accurate, objective, and or impartial. If a separate case file for the criminal investigation exists, it was not provided to the PCOB or the evaluator.

Noteworthy in this criminal investigation is the decision to refer or not refer the matter to the Commonwealth Attorney. As it stands, the G.O. 537.00- Response to Resistance VIII. recognizes the possibility of a Commonwealth Attorney referral, "*Commonwealth Attorney Review Requested*". The

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<sup>28</sup> CPD IA Investigative Report Arrest of C.G.

<sup>29</sup> For more on how leading questions can undermine an investigation see:

Jonathan A. Segal, Are your questions undermining your investigations? SHRM (2021), <https://www.shrm.org/hr-today/news/hr-magazine/fall2021/pages/are-your-questions-undermining-your-investigations.aspx>

*Division Commander recognizes criminal conduct and further consultation is needed. The Division Commander will make immediate notification to the Assistant Chief of Police. The Assistant Chief will consult with the Chief of Police to determine investigative responsibility after consultation with the Commonwealth Attorney”* (pg 10). Furthermore, the G.O. notes that the Assistant Chief of Police or the Chief of Police could take further action, *“Note: The Assistant Chief of Police or the Chief of Police may order a full RTR investigation or a Commonwealth Attorney review at any time.”* In this section, the Department does not explicitly identify the threshold or the standard for deciding to refer, however, from the CPD Captain’s email noted earlier, it appears he used the *probable cause* standard.

The Office of Community Oriented Policing Services (COPS) office has guidance<sup>30</sup> regarding this decision making. In their STANDARDS AND GUIDELINES FOR INTERNAL AFFAIRS: Recommendations from a Community of Practice report, the agency notes the following:

*“Criminal misconduct is when there is reasonable suspicion to believe that the agency member committed a crime. A decision not to classify a possibly criminal complaint as such should be approved by the unit commander of Internal Affairs or its equivalent or the agency head or designee according to protocols agreed upon with the District Attorney. If that concurrence is verbal, Internal Affairs should reduce it to writing and place it in the file. Declination of prosecution should not be the sole basis for closing the agency’s administrative investigation associated with the criminal case.”* (pg. 22)

In this case, the CPD Captain making the determination to refer to the Commonwealth Attorney noted that there was no referral “because no criminal violation occurred that needed legal review.” It is unclear how that conclusion was reached; however, the undisputable facts of this case reveal that there was a use of force applied to a community member by a CPD officer that needed to be investigated to determine if it was willful, intentional, reckless, or excessive or unreasonable.

The COPS report further notes that,

*“Questions arise whether complaints of excessive or unnecessary force must always be dealt with as a criminal complaint. A suggestion for a resolution of the question is that a complaint that*

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<sup>30</sup> Source: U.S. Department of Justice, Office of Community Oriented Policing Services, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>

*alleges or suggests that an officer's use of force was willfully, intentionally, recklessly, or knowingly excessive or unreasonable should be classified and investigated as a criminal complaint. Some agencies have negotiated agreements over what complaints need to be prosecuted or presented to prosecutors for a decision on prosecution. It is recommended that each agency establish an explicitly codified protocol for the presentation of cases for potential prosecution. Any doubt or uncertainty with respect to a criminal classification should be resolved in consultation with the District Attorney or other local prosecutor.” (pg. 22)*

The CPD Captain, by his own analysis, determined that the force in this case was not excessive with little analysis or support for his conclusion present in the case file. The parallel investigation concerning an administrative violation by Officer L.H. was deficient in a few key elements. As noted in the COPS report,

*“A criminal investigation focuses on whether a crime has been committed and concentrates on the specific actions and mental state of the accused. An administrative investigation of a police officer, on the other hand, should look more broadly at the tactical, strategic, and training implications of a particular incident in conjunction with an examination of whether agency policy was violated. There should be an active administrative investigation of any matter that is also being pursued as a criminal investigation.” (pg. 23).*

The Department did properly identify that there were two investigations that needed to occur, however, the administrative investigation fell short on looking “more broadly at the tactical, strategic, and training implications of a particular incident.” As observed in prior arrests of C.G., the Department has been able to arrest C.G. for the same offense without the application of force. In prior encounters between CPD and C.G., at least two officers have been present at the scene. It was unclear why Officer L.H. made the tactical decisions on the day in question. Specifically, why did he not request more information about C.G.? What was the reason for arresting C.G. without the benefit of a back-up or cover officer<sup>31</sup>? As noted, prior arrests of C.G. with a two-officer approach have been resolved without escalation. This was not explored in either the criminal investigation and or the administrative investigation.

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<sup>31</sup> The officer does request the “van,” but does not allow for a backup officer to arrive before proceeding with the arrest. G.O. 537.00- Response to Resistance V. already recognizes this as a de-escalation technique: “Specific non-escalation and de-escalation techniques include time and distance, officer positioning, use of clear and effective communication skills, and/or additional personnel such as CIT trained officers or officers with Less-lethal tools.”. For more information about the backup officer tactic see: Steve Albrecht & John Morrison, Contact & Cover: Two-officer suspect control (1992).

As it relates to thoroughness and completeness, there were some investigative tasks that could have been pursued further. The file indicates that there was a canvass of the field for any surveillance footage that may have been available, however, it was unclear from the file if the investigator attempted to contact managers at the CVS<sup>32</sup> where this incident occurred. There is a surveillance camera inside the CVS that captures some of the area in front of the store. Did the investigators assigned to the case secure that footage from CVS or attempt to? If not, was there a reason why it was not collected as evidence? The evaluator asked the Department this question, but no response was provided in time for the completion of the report.

Another component of these elements, was the interviewing of C.G. According to the case file, there was an attempt to contact C.G.'s attorney via phone on or about July 14, 2020, however this appeared to be the only phone call. Unlike the other calls noted in the case file, there was no recording of this voicemail message. It was unclear if the Department or the investigators made attempts to speak with C.G. directly while he was in jail? Was there a reason why this was not attempted? A reasonable justification would be that since C.G. had an attorney, attempts to contact him outside of his attorney's presence could be viewed as coercive and a violation of his 6<sup>th</sup> amendment right to counsel. However, the questioning should have been pursued further through the attorney. Had C.G. been willing to provide a narrative of the event in question, this may have answered key questions regarding his level of intoxication, his resistance to the officer's actions and his "assault" on the CPD officer.

Regarding objectivity and impartiality, there was one instance that negatively impacted these elements. As depicted in the BWC of a witness officer, while collecting statements from bystanders on the day of the incident in question, one CPD officer commented<sup>33</sup> to an independent witness "that's what we

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<sup>32</sup> The CPD Captain who conducted the criminal investigation did note during the interview with the subject officer that he attempted to retrieve the CVS recording, however, he determined that the footage did not capture the incident in question.

<sup>33</sup> CPD Witness officer BWC

want to hear” after the bystander provided positive remarks about the officer’s actions. This commentary, while seemingly well-intentioned, is ill advised. In the context of field interviews, such commentary may give the impression that the CPD is only interested in “positive” commentary that may exonerate officers, but not “negative” commentary which may incriminate. This can impact further responses and statements provided to CPD. Officers collecting statements on the scene should make all efforts to remain as neutral and impartial in order to protect the integrity of the investigation.

### The appropriateness of the arrest of C.G.

There is an important distinction about the appropriateness to arrest for public intoxication under the state law and the appropriateness under the Department’s G.O. In reviewing the case file, there is sufficient support that the officer had established probable cause to affect the arrest of C.G. in violation of the state’s public intoxication law. The officer responded to an assist call, observed an individual laying in the walkway of the downtown mall, contacted the individual who appeared to struggle to balance himself, observed the individual communicated with slurred speech and received affirmation that the individual had consumed alcohol. While the questioning by the Department as it relates to assessing the arrest based on the state law is sufficient, it must be reiterated that there were additional questions needed to ascertain whether the actions followed the Department’s policy.





*Figure 1 C.G. sleeping on the downtown mall. Source: CPD*

As discussed in the threat to arrest section of this report, the Department should have asked additional questions to determine how the subject officer ascertained that the arrest was the proper action in accordance with the G.O. The G.O. states, "When the subject of a public intoxication investigation is intoxicated to a degree that the investigating officer believes the subject may cause harm to himself/herself or others, the investigating officer will follow the procedures of arrest..." How did the subject officer reach this conclusion?

#### [The felony assault on a police officer charge applied to C.G](#)

The Complainant questioned the appropriateness of the charge of felony assault on a police officer. This allegation was not fully explored in the administrative investigation, however, in reviewing the complete case file there is probable cause to support the charge. Specifically, when informed that he

was being placed under arrest C.G. stated, “let’s do this.” A reasonable officer, given the totality of the circumstances (i.e. perceived level of intoxication, tone used by C.G., statements made by C.G., non-compliance, etc.), could interpret the underlying behavioral cues of C.G. to be pre-assault indicators.<sup>34</sup> Furthermore, when the actual physical struggle between C.G. and the subject officer ensued, C.G. also uttered, “Fuck you bitch” as Officer L.H. attempted to take control of him. Lastly, as captured by the BWC, during the probable cause hearing before the magistrate, C.G. clarified to the magistrate, “I was whooping his ass, he wasn’t whooping my ass.” This admission of guilt, along with the other circumstances, make the charge of assault on a police officer an accurate charge in this encounter.

## CONCLUSION

All in all, the Department made a bona fide effort to investigate what appeared to be a serious use of force matter, especially weeks after the murder of George Floyd. Community members rightfully raised concerns about the interaction in question and the Department appropriately proceeded with both a criminal investigation and an administrative investigation to review the allegations at hand. In doing these investigations, however, this evaluator found significant investigative gaps and deficiencies that could impact how the community continues to relate with the Department. The quality of an internal investigation plays an integral role in how community members perceive the Department’s commitments to justice, fairness, transparency and accountability. This case presents an opportunity for the various

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<sup>34</sup> This is also not explicitly noted in G.O. 537.00- Response to Resistance, however the ability to identify pre-assault indicators is a Compulsory Minimum Training Standard of the Virginia Department of Criminal Justice (DCJS) (which certifies CPD officers). For more information on DCJS training curriculum see: <https://www.dcms.virginia.gov/law-enforcement/manual/standards-performance-outcomes/law-enforcement-officers/defensive-tactics-use-of-force>. For more information on pre-assault indicators see: Dave Young, Pre-attack indicators POLICE Magazine (2018), <https://www.policemag.com/342414/pre-attack-indicators>

stakeholders engaged in the civilian oversight program in the City to consider short-term and long-term policy implications for sustainable police accountability.

As will be articulated in the next section, the Department can implement immediate changes to improve the provision of services for community members but must also take time to consider broader policy issues. Some policy, practice and procedural considerations include what information is provided to complainants of police misconduct, when can officers review BWC, guidance for officers to determine an intoxicated person's "harm" level, tactical training/refresher on two-officer approach when dealing with intoxicated persons.

## RECOMMENDATIONS

This recommendations section is organized by the City stakeholder department (i.e. City Council, City Manager Office, CPD, and PCOB) and by the type of recommendation (i.e. procedural, policy, practice). The recommendations are enumerated, but this does not suggest a ranking or priority.

As noted in the timeline<sup>35</sup>, the progression of the Board has been pedestrian. In order to have an effective civilian oversight program, the PCOB needs a commitment from all relevant stakeholders. The following recommendations were made from the experience of completing this neutral evaluation and from the year-long tenure as the Executive Director.

*Table 1 Recommendations for City Council*

Policy Recommendation Number	Type of Recommendation (i.e. procedural, policy, practice)	Recommendation	Reason for Recommendation	Expected/Potential Outcome
1	Policy	Consider how policies regarding the application of the public intoxication statute can have a	The Complainant aptly identified how the Department's interpretation and application of the	The Department will be relieved of providing public safety services that may be best served by other

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<sup>35</sup> See Exhibit K

		disparate impact in vulnerable communities in the City of Charlottesville.	public intoxication law (if applied disproportionately on the downtown mall) may infringe on the constitutional rights of vulnerable community members.	mechanisms. Improved police community relations.
2	Practice	Consider ensuring a more thorough oversight of PCOB members to include the Board's compliance with the execution of duties in a reasonable time frame.	The Board took two years to resolve this matter. The Board also did not have an Executive Director for two years and vacancies on the Board were not filled in a timely manner.	Increased efficiency. More deliverables to the community and Council.
3	Policy/procedure	Consider amending the current ordinance to specify a time frame or provide more guidance to the PCOB regarding review hearings beyond the wording in Sec. 2-459 (b) Hearing to be scheduled: "...shall be held promptly."	This clause does not provide sufficient specificity on resolving complaints through hearings. This can have a negative impact on the subject officer, the Complainant, and the community at large.	Increase the credibility and efficiency of the Board.

The City Manage Office plays a pivotal role in ensuring the civilian oversight program is successful. The program depends on the administrative support provided by the Executive Director who is managed by the City Manager. The following recommendations are aimed to improve the process and procedures

in a short-term fashion and long-term. Continued interdepartmental collaboration will improve the success of the PCOB.

*Table 2 Recommendations for City Manager*

Policy Recommendation Number	Type of Recommendation (i.e. procedural, policy, practice)	Recommendation	Reason for Recommendation	Expected/Potential Outcome
1	Practice	Consider working with the City Attorney's Office to ensure a representative from that office is present at key PCOB meetings to include pre-hearings and hearings.	There were issues and concerns expressed by the City Attorney Office which could have been resolved during the meetings and or in a timelier manner.	Improve efficiency of the PCOB processes and practices and ensure legal compliance with the City regulations.
2	Procedure	Consider working with the City Attorney's Office to ensure a representative from that office is providing timely legal review of PCOB policies, practices and procedures.	There have been considerable delays in the approval process of various policies, and it is impacting the credibility and impact of the Board.	Increase credibility of the Board.
3	Procedure	Consider prioritizing the provision and or approval of essential PCOB resources (i.e. human resources, public facing office, etc.)	The management analyst position was posted a full year after the recommendation was made to hire support staff in addition to the Executive Director. The Board still does not have a public facing office.	Maximize the potential of the Board. Ensure that it is equipped to provide services as contemplated by the ordinance.

Considering the frail relations between the CPD and the community since the Unite the Right Rally of 2017, there should be more consideration for how the Department promotes transparency and internal accountability in its institutional practices. Referring allegations of criminal misconduct to the Commonwealth Attorney when there is *reasonable suspicion* that a violation occurred, can have a positive impact on the Department's credibility and impartiality as it relates to internal affairs investigations. Additionally, the Department should consider improving its internal affair investigation processes to better account for investigative activities. The Department should consider updating the UOF/RTR policy to include DCJS learning outcomes like identifying pre-assault indicators. Additionally, the Department should consider retraining the subject officer on the importance of utilizing backup officers to de-escalate and improve officer and community safety. This latter recommendation is made with full awareness that the Department is currently facing retention and recruitment obstacles.

Lastly, the Department should consider its practices of what information is shared with complainants to reach their investigatory conclusions. The Complainant requested one of the videos the Department used. There was no clear indication why the video was withheld. A possible explanation is that it included audio of the community member's voice which could be used to identify the person. This could have been easily resolved by redacting or distorting the voice.

*Table 3 Recommendations for the Charlottesville Police Department*

Policy Recommendation Number	Type of Recommendation (i.e. procedural, policy, practice)	Recommendation	Reason for Recommendation	Expected/Potential Outcome
1	Practice	Consider requiring internal affairs investigations to develop an investigative plan before commencing an investigation (and revising	Standard best and effective practice	Increase reliability, credibility and accountability in the process.

		throughout as appropriate).		
2	Policy	Consider lowering the <i>probable cause</i> standard to <i>reasonable suspicion</i> when determining whether to refer complaints to the Commonwealth Attorney Office (or another investigative agency) when there are allegations of criminal misconduct against a CPD officer.	The policy, practice and or procedure as written is not clear on this.	Increase reliability, credibility and accountability in the process.
3	Policy	Consider revising the public intoxication G.O. to further guide officers in the decision-making process when dealing with individuals who are intoxicated in public.	The policy as written is somewhat ambiguous on what factors the officer should consider when assessing the propensity of a person to cause harm to self or others when intoxicated.	Improve community-police relations and trust.
4	Procedure	Consider retraining officers or reminding them (through a circular order, roll-call training, or other means) about the purpose of the public intoxication statute and the options officers have at their	These arrests account for a sizeable amount (approximately 10% of arrests between 2014-2019) <sup>36</sup> of CPD arrests in the past years.	Increases officer efficiency and confidence when dealing with these matters.

<sup>36</sup> See Charlottesville Open Data Portal for more information:  
<https://opendata.charlottesville.org/datasets/charlottesville>

		disposal in those encounters.		
5	Practice	Consider memorializing all investigative activity through memorandums of investigative activity.	Standard best and effective practice	Increase reliability, credibility and accountability in the process.
6	Policy	Consider revisiting policies regarding whether officers can view BWC before their report writing in instances where force was utilized and or where an encounter may reasonably lead to a complaint or Departmental review.	Standard best and effective practice	Increase reliability, credibility and accountability in the process.
7	Policy	Consider updating UOF/RTR to include explicit identification and handling of pre-assault indicators.	A more thorough identification of these indicators could improve the officer's decision making.	Reduce UOF/RTR by utilizing other de-escalation techniques
8	Policy	Consider retraining the officer of de-escalation techniques	The present case demonstrated opportunities for improved decision making.	Reduce UOF/RTR by utilizing other de-escalation techniques
9	Practice	Consider revisiting how much information is made available to complainants of misconduct, with the goal of providing more information (as practicable).	The complainant was not allowed to see one of the videos used to make the determination.	Increased transparency, public trust and better community relations.



The PCOB can utilize the present case as a learning opportunity on many fronts. One important takeaway is the importance of timely reviews for institutional accountability. Backlog is the enemy of a civilian oversight program and many programs around the Country have become irrelevant or lost full community support because of backlog. While there are different reasons that explain the delay in the present case, the PCOB can and should commit to more timely reviews. The present case was in part completed because of a request for Board members to recuse themselves. This is a topic Board members should consider more carefully. For improving community public trust, it may be beneficial to layout conditions and guidance for recusal. PCOB members should consider timely notifications of recusals based on ideological and or philosophical factors since these are more clear and there is more advanced notice.

*Table 4 Recommendations for the Police Civilian Oversight Board*

Policy Recommendation Number	Type of Recommendation (i.e. procedural, policy, practice)	Recommendation	Reason for Recommendation	Expected/Potential Outcome
1	Procedure	Consider further exploring the use of recusals and how to determine whether a conflict of interest exists that could impact the public trust in the Board.	Standard best and effective practice	Increase reliability, credibility and accountability in the process.
2	Practice	Consider modeling institutional transparency by publicizing the training and attendance logs <sup>37</sup> of Board members.	Standard best and effective practice	Increase reliability, credibility and accountability in the process.
3	Procedure	Consider formally adopting a review metric like the <i>rubric</i> utilized by	Standard best and effective practice	Increase reliability, credibility and accountability in the process.

<sup>37</sup> See Indianapolis Citizens' Police Complaint Board (CPCB) training log as a reference: [https://media.graphassets.com/HICCCVqrRt2b6YGlbAqd?\\_gl=1\\*1nuvf0v\\*\\_ga\\*OTk1MzE3NDcyLjE2MTkwMDY0NzE.\\*\\_ga\\_G6FYGSYGZ4\\*MTY1NjYwMTY4Mi4xNS4xLjE2NTY2MDIwMjUuMzg](https://media.graphassets.com/HICCCVqrRt2b6YGlbAqd?_gl=1*1nuvf0v*_ga*OTk1MzE3NDcyLjE2MTkwMDY0NzE.*_ga_G6FYGSYGZ4*MTY1NjYwMTY4Mi4xNS4xLjE2NTY2MDIwMjUuMzg).

		the evaluator in this report.		
4	Procedure	Consider reevaluating a standard for current and future Board member “readiness”.	Standard best and effective practice	Increase reliability, credibility and accountability in the process.
5	Policy	Consider adopting the neutral evaluation as a permanent option for informally resolving complaints.	Given the particulars of this case, it may be a good option for similar cases or individuals who have interest in having a review, but not a hearing by a neutral evaluator.	Increase reliability, credibility and accountability in the process.
6	Practice	Consider auditing or investigating whether there is empirical support for the assertion that public intoxication is being disproportionately enforced in the downtown mall and what impact that may have on historically underserved communities.	The claim was made that there is disproportionate application of this law in the downtown mall. This claim was not empirically investigated as part of this evaluation.	A systematic review of this claim will position the Board to make further recommendations where warranted.

## EXHIBIT A

On Jul 9, 2020, at 12:18 PM, Jeff Fogel <[jeff.fogel@gmail.com](mailto:jeff.fogel@gmail.com)> wrote:

**WARNING:** This email has originated from **outside of the organization**. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Chief Brackney:

Attached is a video of one of your officers who appears to have assaulted, kicked and then applied a choke hold on a homeless person on the downtown mall yesterday. The video does not indicate what led up to this encounter but a witness told me that it happened after the gentleman refused to leave the location where he was standing.

Here is your chance at transparency: immediately release the officers body cam. That might explain more of what happened.

<https://www.instagram.com/tv/CCZazjLg226/?igshid=18zdwvtvgafjm>

Jeff Fogel

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Jeffrey E. Fogel  
Attorney at Law  
913 E. Jefferson Street  
Charlottesville, VA 22902  
(434) 984-0300

## EXHIBIT B

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### Charlottesville Police Department Office of Professional Standards Internal Affairs Unit

September 8, 2020

Jeff Fogel

Jeff.fogel@gmail.com

Dear Mr. Fogel,

This letter is to follow up on your complaint IA case file # **2020- 015-C**, to inform you the investigation of your complaint against Officer Houchens has been completed. The possible violations investigated were as follows:

General Order 400.00, Code of Conduct- Rules and Regulations-

\*48: Use of Force- Officers shall not use more force in any situation than is reasonably necessary under the circumstances. Officers shall use force in accordance with law and Department procedures. (General Order 537.00)

General Order 400.05, Bias Based Policing- The detention, interdiction, or other disparate treatment of any person on the sole basis of their racial, ethnic status, or characteristics.

Internal investigations can result in the following findings:

Sustained – Allegations true and officer is determined to have acted in violation of applicable procedures, techniques, and regulations.

Not Resolved – Unable to verify the truth or falsity of complainant's allegations.

Exonerated – Allegations true, but not misconduct due to adherence to applicable procedures, techniques, and regulations.

Unfounded – No basis of fact to support the allegation

The disposition of this investigation is as follows:

General Order 400.00, Code of Conduct- Rules and Regulations-

\*48: Use of Force- Exonerated

General Order 400.05, Bias Based Policing- Unfounded

The evidence and statements collected during the investigation do not sufficiently support the allegations against Officer Houchens.

Per our policy, you are afforded the opportunity to further meet and discuss the investigation if you choose. If you wish to meet or have any additional questions or concerns, please contact me.

Sincerely,

Lt. Michael Gore  
Professional Standards Unit  
Office of Internal Affairs  
Charlottesville Police Department  
gorem@charlottesville.org

## EXHIBIT C

**From:** Evans, Stuart <[evanss@charlottesville.gov](mailto:evanss@charlottesville.gov)>  
**Sent:** Friday, September 11, 2020 3:33 PM  
**To:** Fogel, Jeff <[jeff.fogel@gmail.com](mailto:jeff.fogel@gmail.com)>  
**Cc:** Police Civilian Review Board <[policecrb@charlottesville.gov](mailto:policecrb@charlottesville.gov)>  
**Subject:** RE: Internal Affairs Outcome Letter

Mr. Fogel,

I wanted to let you know we received an outcome letter from Lt. Gore regarding the complaints you referenced during the meeting last night. I have reached out to the City Attorney's office with a few questions the CRB has about next steps and the contents of the letter. Assuming the City Attorney's office agrees with my reading of the ordinance, the CRB will plan to move forward with conducting a Review Request related to your complaints. We will be in touch as soon as possible about that process. Thank you for your patience and understanding.

Best regards,  
Stuart Evans

## EXHIBIT D

On Mon, Sep 14, 2020 at 4:50 PM Evans, Stuart <[evanss@charlottesville.gov](mailto:evanss@charlottesville.gov)> wrote:  
Mr. Fogel,

Following up on my email below - and acting on advice of counsel - we would ask that you confirm that you would like the PCRb to move forward with the Review Request process. You can send your response by responding to this email.

Thanks again,  
Stuart

## EXHIBIT E

**From:** Jeff Fogel <[jeff.fogel@gmail.com](mailto:jeff.fogel@gmail.com)>  
**Sent:** Monday, September 14, 2020 5:43 PM  
**To:** Evans, Stuart <[evanss@charlottesville.gov](mailto:evanss@charlottesville.gov)>  
**Cc:** Watson, James <[watsonj@charlottesville.gov](mailto:watsonj@charlottesville.gov)>; Robertson, Lisa <[robertsonl@charlottesville.gov](mailto:robertsonl@charlottesville.gov)>  
**Subject:** Re: Fw: Internal Affairs Outcome Letter

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Stuart,

I was told by IA that they would not show me a key piece of evidence that they relied on in making their decision. If I saw that video and it supported the police department's conclusions about some of the issues in this case, I could narrow the request for review. I am assuming, of course, that the PCRb will have access to that video as I wish the review to proceed.

Jeff Fogel

## EXHIBIT F

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### MEMORANDUM

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**TO:** WILLIAM "BILL" MENDEZ, PCOB CHAIR  
JAMES WATSON, PCOB VICE CHAIR

**CC:** CYNTHIA HUDSON, INDEPENDENT COUNSEL FOR THE PCOB  
PAMELA "PAM" O' BERRY, INDEPENDENT COUNSEL FOR THE PCOB

**FROM:** HANSEL AGUILAR, EXECUTIVE DIRECTOR OF THE PCOB

**SUBJECT:** RECOMMENDATION TO CONTINUE HEARING IN RE CIVILIAN COMPLAINT  
BROUGHT BY JEFF FOGEL

**DATE:** THURSDAY, JULY 14, 2022

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#### Background:

On July 11, 2022, the Police Civilian Oversight Board (PCOB) convened a "Prehearing Conference" to discuss preliminary matters related *In Re Civilian Complaint brought by Jeff Fogel*. The meeting was held virtually and attended by the PCOB members<sup>1</sup>, Complainant Jeff Fogel, Charlottesville Police Department Chief Latroy "Tito" Durrette, Charlottesville Police Department Internal Affairs Sergeant Gregory Wade, Independent Counsellors for the Board Cynthia Hudson and Pam O' Berry, and Hearing Examiner Cecil Creasey, Jr. Towards the end of the conference, Mr. Creasey inquired if the parties would be open to alternative dispute resolution as contemplated in the procedures.<sup>2</sup> At the conference, Mr. Fogel indicated that he would be open to speaking with someone about this case and Chief Durrette indicated that he would get back to the Board and or the Hearing Examiner about his decision. Since the prehearing conference, I have engaged in follow-up conversations with the parties and the hearing examiner regarding the possibility of informal resolution.

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<sup>1</sup> All members (to include recently appointed Member Dashad Cooper) were in attendance except for Mrs. Deirdre Gilmore.

<sup>2</sup> "6. Informal Resolution. At any time after receiving a Complaint and before issuance of the written findings required at the conclusion of a Hearing, the PCRB and any party may propose an informal resolution of the Complaint which may be adopted if all parties and the PCRB agree to such a resolution."  
<https://charlottesville.org/DocumentCenter/View/7061/RESOLUTION-passed-November-01-2021-Approving-Hearing-Procedures-for-the-Charlottesville-Police-Civilian-Review-Board-PDF>

The purpose of this memorandum is to communicate to the PCOB that as of 8:41 AM on Thursday, July 14, 2022, the parties *In Re Civilian Complaint brought by Jeff Fogel* have agreed<sup>3</sup> to engage in ADR to be facilitated by Hearing Examiner, Cecil H. Creasey on July 28, 2022 (time and location TBD). It is my recommendation that the Board continues the hearing until receiving notification from the parties about the outcome of the ADR session. The parties have agreed that if no agreement is made, the case will return to the Board for a hearing at the next practicable meeting date.

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<sup>3</sup> The agreement has been memorialized via an email certification from each party and the Hearing Examiner.



## EXHIBIT G



### POLICE CIVILIAN OVERSIGHT BOARD

#### NEUTRAL EVALUATION PROPOSAL

**PRESENTED BY:** HANSEL AGUILAR, Executive Director

**CASE:** RE CIVILIAN COMPLAINT BROUGHT BY JEFF FOGEL

The Executive Director of the PCOB, Hansel Aguilar, will provide a neutral evaluation of the allegations that Mr. Fogel mentioned in his initial email to the Department and the subsequent concerns Mr. Fogel raised about the nature of the arrest. Specifically, the neutral evaluation will consider:

- Whether the CPD thoroughly, completely, accurately, objectively, and impartially investigated the claims that the CPD subject officer:
  - Assaulted;
  - Kicked; and
  - Applied a chokehold on Mr. Gonzalez in the downtown mall.
- Whether the CPD considered and thoroughly, completely, accurately, objectively, and impartially investigated the additional allegations brought forth by Mr. Fogel. Specifically, the appropriateness of the:
  - Threat to arrest Mr. Gonzalez;
  - The arrest of Mr. Gonzalez; and
  - The felony assault on a police officer charge.

The purpose of the neutral evaluation is to holistically review the CPD's investigative file and provide findings on the aforementioned elements (i.e. thoroughness, completeness, accuracy, objectivity, and impartiality). The report will also include the following recommendations (where applicable):

- Recommendations to the CPD to improve practices, policies, and procedures regarding any aspect of the case in question;
- Recommendations to the Board to improve practices, policies, and procedures regarding their review of this case and or provision of services to community members;
- Recommendations to the City Council to improve practices, policies, and procedures associated with the work of the Board; and
- Recommendations to the City Manager to improve practices, policies, and procedures associated with administrative support provided to the Board.

The neutral evaluation (review and report) shall be completed within 30 days<sup>1</sup> from the execution of the agreement by both parties. Upon delivery and publication of the evaluation report, the CPD will be provided with a period of 10 days to provide a public written response to any elements of the report. Mr. Fogel will then have 10 days from the publication of the CPD's response to provide a written response to the evaluation response and or the CPD's response. All three documents (i.e. evaluator's report, CPD's response, and Mr. Fogel's response) will all be part of the final report to be published on the PCOB website. Mr. Fogel and CPD are agreeing to forego a public review hearing adjudicated by the Board.

	Aug 15, 2022		Aug 16, 2022
Jeff Fogel, Complainant	Date	Latroy "Tito" Durette, Chief of Police	Date

<sup>1</sup> Excludes weekends and public holidays

## EXHIBIT H

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### MEMORANDUM

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**TO:** WILLIAM "BILL" MENDEZ, PCOB CHAIR  
JAMES WATSON, PCOB VICE CHAIR

**CC:** CYNTHIA HUDSON, INDEPENDENT COUNSEL FOR THE PCOB  
PAMELA "PAM" O' BERRY, INDEPENDENT COUNSEL FOR THE PCOB

**FROM:** HANSEL AGUILAR, EXECUTIVE DIRECTOR OF THE PCOB

**SUBJECT:** RECOMMENDATION TO ACCEPT NEUTRAL EVALUATION AGREEMENT IN RE  
CIVILIAN COMPLAINT BROUGHT BY JEFF FOGEL

**DATE:** TUESDAY, AUGUST 16, 2022

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**Background:**

On July 14, 2022, the Police Civilian Oversight Board (PCOB) met for the scheduled hearing date for: *In Re Civilian Complaint brought by Jeff Fogel*. On the day of the hearing, the PCOB resolved to continue the hearing in order to allow the parties time to informally resolve the matter. After the hearing date, Hearing Examiner Cecil Creasey, Jr. asked the parties to sign and return a mediation session agreement form. The parties did not submit the forms to the Hearing Examiner by July 28<sup>th</sup>, 2022 as anticipated, and the Hearing Examiner postponed the planned mediation session to be held on that day.

On July 29<sup>th</sup>, 2022, City Manager Michael Rogers, City Attorney Lisa Robertson, Board Chair Mendez, Independent Counsel for the Board Cynthia Hudson and I met to discuss procedural and legal issues with having a mediation session at this juncture. Specifically, the group discussed the limitations of Board powers and activities in this phase where the City Council has not approved the Operating Procedures for the Board. At that session, I presented a potential tool of alternative dispute resolution to explore (neutral evaluation). The stakeholders agreed that the proposal to utilize a neutral evaluation could satisfy the procedural and legal issues if the parties accepted.

On August 1<sup>st</sup> and 2<sup>nd</sup> of 2022 the parties were presented with the neutral evaluation proposal that I drafted. On August 15<sup>th</sup> and 16<sup>th</sup>, 2022 the parties signed the neutral evaluation proposal.

The purpose of this memorandum is to communicate to the PCOB that as of 8:52 AM on Tuesday, August 16, 2022, the parties *In Re Civilian Complaint brought by Jeff Fogel* have agreed<sup>1</sup> to allow me to conduct a neutral evaluation to resolve this matter. It is my recommendation that the Board accepts this agreement between the parties and allows me to complete the neutral evaluation. Additionally, I recommend that the Board certify via vote and subsequently notify Hearing Examiner Cecil Creasey, Jr. that his services for a mediation session will not be required and that the parties have agreed to forego a hearing adjudicated by the Board.

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<sup>1</sup> The agreement has been memorialized via a signed written agreement that is accompanied to this memorandum.

## EXHIBIT I

RESOLUTION OF THE CHARLOTTESVILLE POLICE CIVILIAN  
OVERSIGHT BOARD DISMISSING REVIEW REQUEST REGARDING  
CHARLOTTESVILLE POLICE DEPARTMENT  
COMPLAINT NO. # 2020-0015 (IN RE  
CIVILIAN COMPLAINT BROUGHT BY JEFF FOGEL)

**WHEREAS**, the parties to the Review Request of Charlottesville Police Division Complaint #2020-0015 were scheduled to be heard by the Charlottesville Police Civilian Review Board (the Board) on July 14, 2022; and

**WHEREAS**, by Resolution of the Board dated July 14, 2022 the Board hearing was continued pending the outcome of alternative dispute resolution proceedings to be pursued by the Parties; and

**WHEREAS**, the Board, through its Executive Director, understands that the Parties have agreed to submit the matters for review to Neutral Evaluation by the Executive Director in accordance with the terms of the attached agreement; and

**WHEREAS**, the Parties, by their agreement to submit the matter to Neutral Evaluation have stated their understanding that they forego hearing and resolution by the Board.


**NOW, THEREFORE, BE IT HEREBY RESOLVED** by the Charlottesville Police Civilian Oversight Board that:

- (1) The Review Request filed by the Complainant in Charlottesville Police Division Complaint #2020-0015 is hereby dismissed, with prejudice; and
- (2) The Executive Director shall issue a copy of this Resolution to the Parties and to Hearing Examiner Cecil Creasy.

Adopted on this 18th day of August, 2022.

	<u>Aye</u>	<u>No</u>	<u>Abstained</u>
Brown	<u>X</u>	___	___
Carpenter	<u>X</u>	___	___
Cooper	<u>X</u>	___	___
Fracher	<u>X</u>	___	___
Gilmore	___	___	___
Mendez	<u>X</u>	___	___
Watson	___	___	___

William Mendez  
 William Mendez (Aug 25, 2022 09:39 EDT), Chair

Witness,   
 Hansel Aguilar, Executive Director  
 Acting as Clerk of the Board

## EXHIBIT J

**Gore, Michael**

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**From:** Jeff Fogel <jeff.fogel@gmail.com>  
**Sent:** Tuesday, August 25, 2020 10:00 AM  
**To:** Gore, Michael  
**Cc:** Brackney, RaShall  
**Subject:** Re: Extension notification.docx

**WARNING:** This email has originated from **outside of the organization**. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Lt. Gore,

The statute which Mr. Gonzalez is charged with violating, Va. Code Sec. 18.2-388, is designed to protect the inebriated person and to protect the community from someone out of control. Here, the officer enforced the law as if it only applied on the Mall. That was wrong and gives the clear impression that the police department is enforcing the law on behalf of businesses, not people. The statute itself and its application in this case has the effect of criminalizing the poor and homeless. There are other, better ways to deal with the issue, though that fault may lie with the department and not the officer.

I question the means by which the officer gained control over Mr. Gonzalez with what appeared to be a kick in the solar plexus or groin and then a headlock to take him down and then holding him in that headlock while on the ground. Finally, Mr. Gonzalez was charged with assaulting a police officer not just resisting arrest as appears on the videos that I have seen. I did not see anything beyond resisting though you may have other evidence. The result of the felony assault charge was that he remained in jail for several weeks, punishment without trial simply on the officer's say so.

In your report, I hope you address these issues.

Jeff Fogel

# EXHIBIT K

The rubric provides a scoring section for each of the five (5) elements under review: thoroughness standard, completeness standard, accuracy standard, objectivity standard, and impartiality standard. The following scores can be assigned pursuant to the review of the case file:

- **Score 4** I feel that CPD took all necessary steps to complete this task.
- **Score 3** I feel that CPD mostly accomplished this task but missed at least one important component.
- **Score 2** I feel that CPD missed at least half of the steps necessary to complete this task.
- **Score 1** I feel that CPD did not adequately address this task.

A total score should be calculated and recorded for each section to assist the reviewer in the analysis of the case file's adequacy. Information (i.e. testimonies, evidence, etc.) from the case file should be considered holistically for a comprehensive assessment of the case under review. The "perfect" or maximum score for each element is equal to 20 points and the total score for all elements combined is 100.

COMPLETED BY: AGUILAR, HANSEL- EXECUTIVE DIRECTOR IA CASE # IA2020-015 Allegation: UOF/RTR: assault; kick; chokehold Total Score: 69 (out of 100)

Completeness Standard	Score #	Notes
An investigation plan was prepared.	0	No investigative plan was found in the case file for either the criminal and or administrative investigation.
All relevant parties were identified.	3	The Department identified most of the internal and external witnesses that could provide relevant information, however did not consider the witness officers and C.G.
All relevant parties were interviewed (or reasonable attempts to interview were made and were properly documented).	3	CG was not interviewed and could have provided key testimony to the arrest in question.
Evidence was identified, acquired, and documented in the case file (or justifications for inability to secure evidence were properly documented).	3	One relevant artifact of evidence that did not appear to be collected in this case was the surveillance footage captured by the CVS camera.

All allegations lodged by the complainant were investigated. (or justifications for inability to investigate some allegations were properly documented).	3	<p>Allegations were assessed as to their reasonableness while they occurred, but not the tactical decisions that could have de-escalated the situation.</p> <p>The case file did not consistently document investigative activities in a systematic manner.</p> <p>→ Total Score: <u>12</u> out of 20</p>
Thoroughness Standard	Score #	Notes
The investigation plan reflected the scope of the allegations under consideration.	0	No investigative plan was found in the case file.
Investigative procedures were followed appropriately.	3	Most procedures followed established best or effective practices of misconduct investigations with the exception of interviewing CG; obtaining the surveillance footage from CVS;
All evidence was fairly and properly evaluated.	3	Considering that not all relevant evidence was obtained (i.e. C.G. testimony, witness officer testimonies, surveillance footage, etc.) a maximum score could not be achieved.
All relevant questions were asked during the interviews.	2	<p>The subject officer was not fully questioned regarding his decision making that could have prevented the UOF/RTR:</p> <ul style="list-style-type: none"> <li>- What was the reason for arresting C.G. without the benefit of a back-up or cover officer? As noted, prior arrests of C.G. with a two-officer approach have been resolved without escalation.</li> </ul>



		- What was the officer's understanding of the Department's RTR policy?
All available tools for assessing the evidence were used appropriately.	3	Commonwealth Attorney, City Attorney or Department's UOF/RTR did not appear to be consulted. →Total Score: <u>11</u> out of 20
Accuracy Standard	Score #	Notes
The applicable General Orders/Ordinances/Statutes/Case laws were considered when assessing the allegations of the complainant.	2	The Department did not fully consider whether the actions of the officer were consistent with the public intoxication general order.
Current applicable norms and societal standards were used to analyze the event in question.	3	The Department did not consider specific ways the officer could have de-escalated the situation further when dealing with intoxicated individuals and unhoused individuals (i.e. would more time with C.G. have resulted in compliance? Would an additional officer reduce the need for force? Etc.)
All relevant subject matter experts were consulted for matters requiring expertise.	3	No indication that this action received a legal review by either the Commonwealth Attorney or City Attorney.
The allegations were examined as presented by the complainant.	2	The Department did not consider the allegation under the relevant G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION

The IA Investigation conclusions were supported by the available evidence.	3	The investigation was mostly <u>accurate</u> , but did require additional investigative steps to <u>improve accuracy</u> . →Total Score: <u>13</u> out of 20
Objectivity Standard	Score #	Notes
An examination of the allegations considered the actual occurrence of the events in question.	3	Several instances where leading questions were posed to the subject officer.
Allegations were corroborated with available evidence.	3	Several witnesses were not interviewed, nor some relevant footage secured.
The CPD objectively determined whether the allegations happened as described.	3	The Department did not consider the allegation under the relevant G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION
The CPD objectively determined whether the allegations violated General Orders/Ordinances/Statutes/Case laws	3	The Department did not consider the allegation under the relevant G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION
The level of objectivity was maintained at all levels of CPD review.	3	The case was not sent to the Commonwealth Attorney and or reviewed by the Department's UOF/RTR subject matter expert. →Total Score: <u>15</u> out of 20
Impartiality Standard	Score #	Notes



The IA investigators provided an equal opportunity for the complainant and subject officer(s) to retell their version of the events.	3	The interview with the complainant was rather brief in comparison to the interview with the subject officer.
Conflicts of interest were avoided in the investigation of the complaint.	4	No apparent conflicts were present for this allegation
Prejudgments regarding the incident were avoided by the investigator.	4	No issues presented
Prejudgments regarding the incident were avoided by the Chief of the CPD.	4	No issues presented
The perspective of the complainant was considered without regard to past occurrences.	3	Although not the "complainant" proper, prior arrest history of C.G. were reviewed quantitatively, but not qualitatively. In reviewing prior arrests, C.G. has been largely compliant, but there was no mention of this.  → Total Score: 18 out of 20

#### OVERALL CASE NOTES:

As noted in the scoring section of each element, this allegation could have been more completely, thoroughly, accurately, objectively and impartially investigated by the Department. The case file included both elements of the criminal investigation and the administrative investigation, however, there was no clear delineation between the two. The Department should consider having two separate case files when an administrative and criminal investigation are taken place. The Department should ensure that all investigative activity is properly documented through a Memorandum of Investigative Activity or similar tool. Additionally, the Department should consider adopting the guidance of a more comprehensive investigations manual such as (among others):

- IACP: <https://www.theiacp.org/sites/default/files/2018-08/BP-InternalAffairs.pdf>
- NJ OAG: <https://www.nj.gov/lps/dcj/aguide/directives/IAPP-August-2020-Version.pdf>
- Oversight Practitioners Barbara Attard & Kathryn Olson: [https://www.amazon.com/Misconduct-Complaint-Investigations-Routledge-Evidence-Based-dp-0367404354/dp/0367404354/ref=dp\\_ob\\_title\\_bk](https://www.amazon.com/Misconduct-Complaint-Investigations-Routledge-Evidence-Based-dp-0367404354/dp/0367404354/ref=dp_ob_title_bk)

RUBRIC COMPLETED BY: AGUILAR, HANSEL- EXECUTIVE DIRECTOR IA CASE # IA2020-015 Allegation: Threat to arrest CG Total Score: 69 (out of 100)

Completeness Standard	Score #	Notes
An investigation plan was prepared.	0	No investigative plan was found in the case file.
All relevant parties were identified.	3	The Department identified most of the internal and external witnesses that could provide relevant information, however did not consider the witness officers and C.G.
All relevant parties were interviewed (or reasonable attempts to interview were made and were properly documented).	3	CG was not interviewed and could have provided key testimony to the arrest in question.
Evidence was identified, acquired, and documented in the case file (or justifications for inability to secure evidence were properly documented).	3	One relevant artifact of evidence that did not appear to be collected in this case was the surveillance footage captured by the CVS camera.
All allegations lodged by the complainant were investigated. (or justifications for inability to investigate some allegations were properly documented).	3	The case file did not consistently document investigative activities in a systematic manner.  → Total Score: 12 out of 20
Thoroughness Standard	Score #	Notes
The investigation plan reflected the scope of the allegations under consideration.	0	No investigative plan was found in the case file.
Investigative procedures were followed appropriately.	3	Most procedures followed established best or effective practices of misconduct investigations with

		the exception of interviewing CG; obtaining the surveillance footage from CVS;
All evidence was fairly and properly evaluated.	3	There did not appear to be a deviation from the evaluation of the available evidence (other than the fact that not all potentially probative evidence was collected).
All relevant questions were asked during the interviews.	2	<p>The subject officer was not fully questioned regarding his decision making:</p> <ul style="list-style-type: none"> <li>- Why did he not inquire about CG's priors with the CPD to the dispatcher?</li> <li>- Why did he decide to arrest CG without the presence of backup officers?</li> <li>- Why did he believe there was an urgent need to arrest CG?</li> <li>- What is his interpretation/understanding of the public intoxication law?</li> <li>- What is his interpretation/understanding of the public intoxication law?</li> <li>- How did he develop probable cause that the complainant's actions/state met the elements of the public intoxication violation?</li> </ul>
All available tools for assessing the evidence were used appropriately.	3	<p>City Attorney did not appear to be consulted.</p> <p>→Total Score: <u>11</u> out of 20</p>
Accuracy Standard	Score #	Notes

The applicable General Orders/Ordinances/Statutes/Case laws were considered when assessing the allegations of the complainant.	2	The Department did not fully consider whether the actions of the officer were consistent with the public intoxication general order.
Current applicable norms and societal standards were used to analyze the event in question.	3	The Department did not consider broader implications of incarceration during Covid-19 beyond the officer expressing he did not want to approach C.G.
All relevant subject matter experts were consulted for matters requiring expertise.	3	No indication that this action received a legal review by either the Commonwealth Attorney or City Attorney.
The allegations were examined as presented by the complainant.	2	The Department did not consider the allegation under the relevant G.O.
The IA Investigation conclusions were supported by the available evidence.	3	<p>The Department did not consider the allegation under the relevant G.O. - 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION</p> <p>→Total Score: <u>13</u> out of 20</p>
Objectivity Standard	Score #	Notes
An examination of the allegations considered the actual occurrence of the events in question.	3	Several instances of leading questions posed to the subject officer
Allegations were corroborated with available evidence.	3	Several witnesses were not interviewed, nor some relevant footage secured.

The CPD objectively determined whether the allegations happened as described.	3	The Department did not consider the allegation under the relevant G.O.
The CPD objectively determined whether the allegations violated General Orders/Ordinances/Statutes/Case laws	3	The Department did not consider the allegation under the relevant G.O.
The level of objectivity was maintained at all levels of CPD review.	3	→Total Score: <u>15</u> out of 20
Impartiality Standard	Score #	Notes
The IA investigators provided an equal opportunity for the complainant and subject officer(s) to retell their version of the events.	3	The interview with the complainant was rather brief in comparison to the interview with the subject officer.
Conflicts of interest were avoided in the investigation of the complaint.	4	No apparent conflicts were present for this allegation
Prejudgments regarding the incident were avoided by the investigator.	4	No issues presented
Prejudgments regarding the incident were avoided by the Chief of the CPD.	4	No issues presented
The perspective of the complainant was considered without regard to past occurrences.	3	Although not the "complainant" proper, prior arrest history of C.G. were reviewed quantitatively, but not qualitatively. In reviewing prior arrests, C.G. has been largely compliant, but there was no mention of this. →Total Score: <u>18</u> out of 20

OVERALL CASE NOTES:

As noted in the scoring section of each element, this allegation could have been more completely, thoroughly, accurately, objectively and impartially investigated by the Department.

RUBRIC COMPLETED BY: AGUILAR, HANSEL- EXECUTIVE DIRECTOR IA CASE # IA2020-015 Allegation: Arrest of C.G. Total Score: 69 (out of 100)

Completeness Standard	Score #	Notes
An investigation plan was prepared.	0	No investigative plan was found in the case file.
All relevant parties were identified.	3	The Department identified most of the internal and external witnesses that could provide relevant information, <u>however</u> did not consider the witness officers and C.G.
All relevant parties were interviewed (or reasonable attempts to interview were made and were properly documented).	3	CG was not interviewed and could have provided key testimony to the arrest in question.
Evidence was identified, acquired, and documented in the case file (or justifications for inability to secure evidence were properly documented).	3	One relevant artifact of evidence that did not appear to be collected in this case was the surveillance footage captured by the CVS camera.
All allegations lodged by the complainant were investigated. (or justifications for inability to investigate some allegations were properly documented).	3	The case file did not consistently document investigative activities in a systematic manner. →Total Score: <u>12</u> out of 20
Thoroughness Standard	Score #	Notes
The investigation plan reflected the scope of the allegations under consideration.	0	No investigative plan was found in the case file.
Investigative procedures were followed appropriately.	3	Most procedures followed established best or effective practices of misconduct investigations <u>with</u>

		the exception of interviewing CG; obtaining the surveillance footage from CVS;
All evidence was fairly and properly evaluated.	3	There did not appear to be a deviation from the evaluation of the available evidence (other than the fact that not all potentially probative evidence was collected).
All relevant questions were asked during the interviews.	2	<p>The subject officer was not fully questioned regarding his decision making:</p> <ul style="list-style-type: none"> <li>- Why did he not inquire about CG's priors with the CPD to the dispatcher?</li> <li>- Why did he decide to arrest CG without the presence of backup officers?</li> <li>- Why did he believe there was an urgent need to arrest CG?</li> <li>- What is his interpretation/understanding of the public intoxication law?</li> <li>- What is his interpretation/understanding of the public intoxication law?</li> <li>- How did he develop probable cause that the complainant's actions/state met the elements of the public intoxication violation?</li> </ul>
All available tools for assessing the evidence were used appropriately.	3	<p>Commonwealth Attorney, City Attorney or Department's UOF/RTR did not appear to be consulted.</p> <p>→Total Score: <u>11</u> out of 20</p>
Accuracy Standard	Score #	Notes

The applicable General Orders/Ordinances/Statutes/Case laws were considered when assessing the allegations of the complainant.	2	The Department did not fully consider whether the actions of the officer were consistent with G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION
Current applicable norms and societal standards were used to analyze the event in question.	3	The Department did not consider broader implications of incarceration during Covid-19 beyond the officer expressing he did not want to approach C.G.
All relevant subject matter experts were consulted for matters requiring expertise.	3	No indication that this action received a legal review by either the Commonwealth Attorney or City Attorney.
The allegations were examined as presented by the complainant.	2	The Department did not consider the allegation under G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION
The IA Investigation conclusions were supported by the available evidence.	3	<p>Relevant evidence and testimony not considered.</p> <p>→Total Score: <u>13</u> out of 20</p>
Objectivity Standard	Score #	Notes
An examination of the allegations considered the actual occurrence of the events in question.	3	Several instances of leading questions posed to the subject officer. Field canvassers nudged witnesses in a specific direction when collecting statements. (i.e., "that's we want to hear.")
Allegations were corroborated with available evidence.	3	Several witnesses were not interviewed, nor some relevant footage secured.

The CPD objectively determined whether the allegations happened as described.	3	The Department did not consider the allegation under G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION
The CPD objectively determined whether the allegations violated General Orders/Ordinances/Statutes/Case laws	3	The Department did not consider the allegation under G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION
The level of objectivity was maintained at all levels of CPD review.	3	Leading questions asked. →Total Score: <u>15</u> out of 20
Impartiality Standard	Score #	Notes
The IA investigators provided an equal opportunity for the complainant and subject officer(s) to retell their version of the events.	3	The interview with the complainant was rather brief in comparison to the interview with the subject officer.
Conflicts of interest were avoided in the investigation of the complaint.	4	No apparent conflicts were present for this allegation
Prejudgments regarding the incident were avoided by the investigator.	4	No issues presented
Prejudgments regarding the incident were avoided by the Chief of the CPD.	4	No issues presented
The perspective of the complainant was considered without regard to past occurrences.	3	Although not the "complainant" proper, prior arrest history of C.G. were reviewed quantitatively, but not qualitatively. In reviewing prior arrests, C.G. has been largely compliant, but there was no mention of this. →Total Score: <u>18</u> out of 20

OVERALL CASE NOTES: As noted in the scoring section of each element, this allegation could have been more completely, thoroughly, accurately, objectively and impartially investigated by the Department.

RUBRIC COMPLETED BY: AGUILAR, HANSEL- EXECUTIVE DIRECTOR IA CASE # IA2020-015 Allegation: Felony assault on a police officer charge.

Completeness Standard	Score #	Notes
An investigation plan was prepared.	0	No investigative plan was found in the case file.
All relevant parties were identified.	3	The Department identified most of the internal and external witnesses that could provide relevant information, <u>however</u> did not consider the witness officers and C.G.
All relevant parties were interviewed (or reasonable attempts to interview were made and were properly documented).	3	CG was not interviewed and could have provided key testimony to the arrest in question.
Evidence was identified, acquired, and documented in the case file (or justifications for inability to secure evidence were properly documented).	3	One relevant artifact of evidence that did not appear to be collected in this case was the surveillance footage captured by the CVS camera.
All allegations lodged by the complainant were investigated. (or justifications for inability to investigate some allegations were properly documented).	3	The case file did not consistently document investigative activities in a systematic manner. →Total Score: <u>12</u> out of 20
Thoroughness Standard	Score #	Notes



The investigation plan reflected the scope of the allegations under consideration.	0	No investigative plan was found in the case file.
Investigative procedures were followed appropriately.	3	Most procedures followed established best or effective practices of misconduct investigations with the exception of interviewing CG; obtaining the surveillance footage from CVS;
All evidence was fairly and properly evaluated.	3	There did not appear to be a deviation from the evaluation of the available evidence with the caveat that not probative evidence was considered.
All relevant questions were asked during the interviews.	2	The subject officer was not fully questioned regarding his decision making regarding this charge: <ul style="list-style-type: none"> <li>- What was his understanding of the charge?</li> <li>- Why did he believe he had probable cause?</li> <li>- Did he seek supervisor review?</li> </ul>
All available tools for assessing the evidence were used appropriately.	4	Commonwealth Attorney, City Attorney or Department's UOF/RTR did not appear to be consulted. →Total Score: <u>12</u> out of 20
Accuracy Standard	Score #	Notes
The applicable General Orders/Ordinances/Statutes/Case laws were considered when assessing the allegations of the complainant.	2	The Department did not fully consider whether the actions of the officer were consistent with the public intoxication general order.

Current applicable norms and societal standards were used to analyze the event in question.	3	The Department did not consider broader implications of incarceration during Covid-19 beyond the officer expressing he did not want to approach C.G.
All relevant subject matter experts were consulted for matters requiring expertise.	3	No indication that this action received a legal review by either the Commonwealth Attorney or City Attorney.
The allegations were examined as presented by the complainant.	2	The Department did not consider the allegation under G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION
The IA Investigation conclusions were supported by the available evidence.	3	→Total Score: <u>13</u> out of 20
Objectivity Standard	Score #	Notes
An examination of the allegations considered the actual occurrence of the events in question.	3	Several instances of leading questions posed to the subject officer. Field canvassers nudged witnesses in a specific direction when collecting statements. (i.e. "that's we want to hear.")
Allegations were corroborated with available evidence.	3	Several witnesses were not interviewed, nor some relevant footage secured.
The CPD objectively determined whether the allegations happened as described.	3	The Department did not consider the allegation under G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION

The CPD objectively determined whether the allegations violated General Orders/Ordinances/Statutes/Case laws	3	The Department did not consider the allegation under G.O.- 536.15 INVESTIGATIONS INVOLVING PUBLIC INTOXICATION
The level of objectivity was maintained at all levels of CPD review.	3	Leading questions asked. →Total Score: <u>15</u> out of 20
Impartiality Standard	Score #	Notes
The IA investigators provided an equal opportunity for the complainant and subject officer(s) to retell their version of the events.	3	The interview with the complainant was rather brief in comparison to the interview with the subject officer.
Conflicts of interest were avoided in the investigation of the complaint.	4	No apparent conflicts were present for this allegation
Prejudgments regarding the incident were avoided by the investigator.	4	No issues presented
Prejudgments regarding the incident were avoided by the Chief of the CPD.	4	No issues presented
The perspective of the complainant was considered without regard to past occurrences.	3	Although not the "complainant" proper, prior arrest history of C.G. were reviewed quantitatively, but not qualitatively. In reviewing prior arrests, C.G. has been largely compliant, but there was no mention of this. →Total Score: <u>18</u> out of 20

OVERALL CASE NOTES: As noted in the scoring section of each element, this allegation could have been more completely, thoroughly, accurately, objectively and impartially investigated by the Department. While there was a CPD formed that indicated there was a supervisor's review of the report, there did not appear to be an actual discussion on the appropriateness of the charge between the subject officer and the supervisor.

## EXHIBIT L

Figure 2 Timeline of Charlottesville Oversight Program Evolution

